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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,986	04/14/2004	Joseph E. Calzone III	CAL-139	7537
20028	7590	01/23/2007		
Lipsitz & McAllister, LLC 755 MAIN STREET MONROE, CT 06468			EXAMINER LEON, EDWIN A	
			ART UNIT	PAPER NUMBER
			2833	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/824,986	Applicant(s) CALZONE, JOSEPH E.	
	Examiner Edwin A. León	Art Unit 2833	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/9/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>WO 99/381151</u> . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7-8, 12, 14-18, 20-21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Asaro (WO 99/38151). With respect to claims 1 and 14, Asaro discloses (in Fig. 1) an apparatus for enhancing the sound of a musical instrument, comprising: an acoustically reflective element (1) adapted to be placed on the floor underneath a musical instrument (2) such that sound waves from the musical instrument which strike the reflective element are reflected upward, thereby enhancing the sound of the musical instrument. The method limitations are deemed inherent and rejected as shown above.

With respect to claims 2 and 15, Asaro discloses (in Fig. 1) the reflective element being a disk shaped element. The method limitations are deemed inherent and rejected as shown above.

With respect to claims 3 and 16, Asaro discloses (in Fig. 1) the reflective element being shaped as a circle. The method limitations are deemed inherent and rejected as shown above.

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With respect to claims 4 and 17, Asaro discloses (in Fig. 1) the reflective element enhancing at least one of the crispness and the brightness of the sound. The method limitations are deemed inherent and rejected as shown above.

With respect to claims 5 and 18, Asaro discloses (in Fig. 1) the reflective element increasing the apparent volume of the sound. The method limitations are deemed inherent and rejected as shown above.

With respect to claims 7 and 20, Asaro discloses (in Fig. 1) the musical instrument comprising a percussion instrument (2). The method limitations are deemed inherent and rejected as shown above.

With respect to claims 8 and 21, Asaro discloses (in Fig. 1) the musical instrument comprising a drum (2). The method limitations are deemed inherent and rejected as shown above.

With respect to claims 12 and 25, Asaro discloses (in Fig. 1) the reflective element having a rounded edge. The method limitations are deemed inherent and rejected as shown above.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 9, 13, 19, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asaro (WO 99/38151). With respect to claims 6 and 19, Asaro discloses substantially the claimed invention except for the reflective element comprising of one of stainless steel, aluminum, copper, brass, wood, or hard plastic.

Still, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have the reflective element comprising of one of stainless steel, aluminum, copper, brass, wood, or hard plastic, since it has been held to be within the general ordinary skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claims 9 and 22, Asaro discloses substantially the claimed invention except for the instrument comprising one of a xylophone, a chime, a cymbal, a gong, a triangle, or tambourine.

Still, it would have been obvious to one with ordinary skill in the art at the time the invention was made to use the apparatus of Asaro in any one of a xylophone, a chime, a cymbal, a gong, a triangle, or tambourine in order to enhance their sound.

With respect to claims 13 and 26, Asaro discloses substantially the claimed invention except for the reflective element being 1/8 of an inch thick or less.

Still, it would have been obvious to one having ordinary skill in the art at the time the invention was made to the reflective element being 1/8 of an inch thick or less, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617, F. 2d 272, 205 USPQ 215 (CCPA 1980).

5. Claims 10-11 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asaro (WO 99/38151) in view of Liao et al. (U.S. Patent No. 6,586,665). With regard to Claims 10 and 23, Asaro discloses substantially the claimed invention except for a protective band around a perimeter of the reflective element.

Liao teaches a similar apparatus having a protective band (5) around a perimeter of an element (3).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the apparatus of Asaro by including a protective band as taught in Liao in order to increase or decrease the tension of the element (Liao, Column 3, Lines 35-40).

Regarding claims 11 and 24, the combination of Asaro and Liao discloses substantially the claimed invention except for the protective band comprising one of soft plastic, rubber, cloth, or wood.

Still, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have the protective band comprising one of soft plastic, rubber, cloth, or wood, since it has been held to be within the general ordinary skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Conclusion

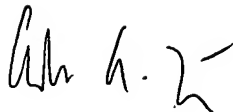
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Martin (U.S. Patent No. 5,602,354) and Billings (U.S. Patent No. 4,805,514) disclose apparatuses similar to Applicant's claimed invention.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edwin A. León whose telephone number is (571) 272-2008. The examiner can normally be reached on Monday - Friday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula A. Bradley can be reached on 571-272-2800, extension 33. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Edwin A. Leon
AU 2833

EAL
January 3, 2007